

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN SENATE MAY 14, 2012

AMENDED IN ASSEMBLY MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 861**

---

---

**Introduced by Assembly Member Hill**

February 17, 2011

---

---

An act to amend Sections 2110 and 2111 of, and to add ~~Sections~~ *Section 451.6 and 451.7* to, the Public Utilities Code, relating to public utilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 861, as amended, Hill. Public Utilities Act: remedies for violation: gas and electrical corporation executive officer compensation incentives.

(1) The California Constitution establishes the Public Utilities Commission, with regulatory jurisdiction over all public utilities, as defined. The Public Utilities Act provides that every public utility and every officer, agent, or employee of a public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of the act, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not

exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

This bill would provide that the fine may not exceed \$5,000.

(2) The act additionally provides that every corporation or person, other than a public utility and its officers, agents, or employees, knowingly violating or failing to comply with, or procuring, aiding, or abetting any violation of the California Constitution relating to public utilities or of the act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or procuring, aiding, or abetting any public utility in a violation or noncompliance, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than \$500, or more than \$20,000, for each offense.

This bill would increase the maximum penalty to not more than \$50,000 for each offense.

(3) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires that any expense resulting from a bonus paid to an executive officer, as defined, of a public utility that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the public utility and prohibits any expense from being recovered in rates.

This bill would require that any expense resulting from an earnings- or stock price-based incentive program paid to an employee or director of an electrical or gas corporation be borne by the shareholders of the utility and would prohibit any expense from being recovered in rates. Because this provision of the bill would be a part of the act and because a violation of an order or decision of the commission implementing this requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

~~(4) This bill would prospectively require, if monetary sanctions are imposed by the commission on an energy public utility, as defined, for a violation, as defined, that the energy public utility recover any excess compensation, as defined, received by any current or former officer or director, as defined, of the energy public utility during the 5-year period preceeding the date on which the monetary sanctions are imposed. If monetary sanctions are imposed by the commission on an energy public utility for a violation, and the energy public utility is owned 80% or more by a holding company, as defined, the bill would prospectively require that the holding company recover any excess compensation~~

~~received by any current or former officer or director of the holding company during the 5-year period preceding the date on which the monetary sanctions were imposed.~~

~~(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 451.6 is added to the Public Utilities  
2 Code, to read:

3 451.6. Any expense resulting from an earnings- or stock  
4 price-based incentive program paid to an employee or director of  
5 an electrical corporation or a gas corporation shall not be  
6 recoverable either directly or indirectly in rates and shall be borne  
7 exclusively by the shareholders of the public utility.

8 SEC. 2. ~~Section 451.7 is added to the Public Utilities Code, to~~  
9 ~~read:~~

10 ~~451.7. (a) For purposes of this section, the following terms~~  
11 ~~have the following meanings:~~

12 (1) ~~“Energy public utility” means a gas corporation, an electrical~~  
13 ~~corporation, or a public utility that is both a gas corporation and~~  
14 ~~an electrical corporation.~~

15 (2) ~~“Excess compensation” means the difference between what~~  
16 ~~an officer or director received in incentive-based compensation~~  
17 ~~during the period in which a violation occurred and what that~~  
18 ~~officer or director would have received had a monetary sanction~~  
19 ~~been imposed concurrent with the violation.~~

20 (3) ~~“Holding company” means an entity with ownership of 80~~  
21 ~~percent or more of an energy public utility.~~

22 (4) ~~“Incentive-based compensation” means, but is not limited~~  
23 ~~to, short-term incentives, long-term incentives, stock options~~  
24 ~~awarded as compensation, and special recognition awards.~~

25 (5) ~~“Monetary sanction” means a commission imposed~~  
26 ~~requirement that an energy public utility pay money as a result of~~

1 a violation that relates to public safety, including any fine, penalty,  
2 or requirement to pay restitution.

3 (6) ~~“Officer” and “director,” with respect to an energy public~~  
4 ~~utility or holding company, have the same meaning as defined in~~  
5 ~~Section 16 of the federal Securities Exchange Act of 1934 (15~~  
6 ~~U.S.C. Sec. 78a et seq.).~~

7 (7) ~~“Violation” means the failure by an energy public utility to~~  
8 ~~comply with any provision of the California Constitution, of this~~  
9 ~~part, or of any order, decision, decree, rule, direction, demand, or~~  
10 ~~requirement of the commission that relates to public safety, results~~  
11 ~~in a monetary sanction being imposed on the energy public utility~~  
12 ~~by the commission.~~

13 (b) ~~If a monetary sanction is imposed by the commission on~~  
14 ~~an energy public utility for a violation, the energy public utility~~  
15 ~~shall recover excess compensation received by any current or~~  
16 ~~former officer or director of the energy public utility during the~~  
17 ~~five-year period preceding the date on which the monetary sanction~~  
18 ~~was imposed.~~

19 (c) ~~If a monetary sanction is imposed by the commission on an~~  
20 ~~energy public utility for a violation, and the energy public utility~~  
21 ~~is owned 80 percent or more by a holding company, the holding~~  
22 ~~company shall recover any excess compensation received by any~~  
23 ~~current or former officer or director of the holding company during~~  
24 ~~the five-year period preceding the date on which the monetary~~  
25 ~~sanction was imposed.~~

26 (d) ~~In any order or decision of the commission that imposes a~~  
27 ~~monetary sanction on an energy public utility, the commission~~  
28 ~~shall make findings whether the monetary sanction is being made~~  
29 ~~as a result of a violation relating to safety. If monetary sanctions~~  
30 ~~are being imposed, in part, as a result of a violation relating to~~  
31 ~~safety, the commission shall specify what monetary sanctions are~~  
32 ~~being imposed because of a violation relating to safety.~~

33 (e) ~~The requirements of this section are applicable to any~~  
34 ~~contract between an energy public utility and a director or officer~~  
35 ~~of that energy public utility, and to any contract between a holding~~  
36 ~~company and a director or officer of that holding company, that~~  
37 ~~is executed, modified, or extended beginning January 1, 2013.~~

38 ~~SEC. 3.~~

39 *SEC. 2.* Section 2110 of the Public Utilities Code is amended  
40 to read:

1     2110. Every public utility and every officer, agent, or employee  
2 of any public utility, who violates or fails to comply with, or who  
3 procures, aids, or abets any violation by any public utility of any  
4 provision of the California Constitution or of this part, or who fails  
5 to comply with any part of any order, decision, rule, direction,  
6 demand, or requirement of the commission, or who procures, aids,  
7 or abets any public utility in the violation or noncompliance in a  
8 case in which a penalty has not otherwise been provided, is guilty  
9 of a misdemeanor and is punishable by a fine not exceeding five  
10 thousand dollars (\$5,000), or by imprisonment in a county jail not  
11 exceeding one year, or by both fine and imprisonment.

12     ~~SEC. 4.~~

13     SEC. 3. Section 2111 of the Public Utilities Code is amended  
14 to read:

15     2111. Every corporation or person, other than a public utility  
16 and its officers, agents, or employees, which or who knowingly  
17 violates or fails to comply with, or procures, aids or abets any  
18 violation of any provision of the California Constitution relating  
19 to public utilities or of this part, or fails to comply with any part  
20 of any order, decision, rule, direction, demand, or requirement of  
21 the commission, or who procures, aids, or abets any public utility  
22 in the violation or noncompliance, in a case in which a penalty has  
23 not otherwise been provided for the corporation or person, is  
24 subject to a penalty of not less than five hundred dollars (\$500),  
25 nor more than fifty thousand dollars (\$50,000) for each offense.

26     ~~SEC. 5.~~

27     SEC. 4. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.